In the Central Administrative Tribunal
Principal Bench, New Delhi

(4)

Regn. No.:

Date: 10.4.1992

1. OA-2856/91, and
2. OA-2864/91

1. Shri Naresh Kumar
2. Shri Mahabir Singh
.... Applicants

Versus

Commissioner of Police and Another .... Respondents

For the applicants .... Shri Shankar Raju, Advocate

For the Respondents .... Shri M.K. Sharma, Advocate

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. A.B. Gorthi, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? Yes
2. To be referred to the Reporter or not? Yes

(Judgement of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman)

The applicants were appointed as Constables in the Delhi Police in 1982. While posted at Adarsh Nagar in the Crime Branch, F.I.R.No.352/91 dated 4.10.1991 under Section 341/506/387/34 IPC was registered against them, along with other persons at Police Station Ashok Vihar, Delhi. The applicants got themselves bailed out on anticipatory bail by the District & Sessions Judge, Delhi. Both of them were placed under suspension on 9.10.1991. Their grievance relates to the impugned order

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dated 22.10.1991 whereby the Deputy Commissioner (Crime Branch) dismissed them by invoking the power under Article 311(2) (b) of the Constitution.

2. The applicants have stated that Head Constable Ram Her Singh, presently posted in Old Police Lines in Communications Department as well as Constable Jagminder Singh, who is posted in North-West District, who are also involved in the criminal case, have also been placed under suspension but they have not been dismissed from service by invoking the power under Article 311(2) (b) of the Constitution.

3. The applicants have contended that the exercise of power under Article 311 (2) (b) of the Constitution in the instant case is with a view to short-circuiting regular departmental enquiry, and that it is not legally sustainable. They have prayed for their reinstatement with all consequential benefits.

4. The respondents have admitted that a criminal case has been registered against the applicants. They have, however, contended that it was not possible to hold the enquiry and consequently, the impugned orders have been passed in exercise of the powers conferred under Article 311 (2) (b) of the Constitution.

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5. We have carefully gone through the records of the case and have considered the rival contentions. The impugned orders of dismissal dated 22.10.1991, issued to the applicants are in identical terms. Article 311 (2)(b) of the Constitution provides that reasonable opportunity of being heard in respect of the charges is not to be given where the authority empowered to dismiss a person is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry. No reasons have been recorded in writing by the disciplinary authority in the instant case as to why a regular enquiry cannot be held against them. The relevant portion of the impugned order is extracted as under:-

> "The involvement of these police personnel in such activities and followed with the registration of a case despite being a policeman shows that they are of desperate character and their continuance in Police is hazardous to the public. The police is the protector of citizens and indulgence of Police officer in such crimes will destroy the faith of the people in the system. The involvement of Constables in these criminal activities is not only undesirable but also amounts to serious misconduct and indiscipline. They have acted in a manner unbecoming of a police officer and highly prejudicial to the security of the citizens.
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> Assessing the above mentioned circumstances and considering all relevant aspects, I, R. Tewari, DCP/Crime Branch, Delhi come to the conclusion that it would not be reasonably practicable to hold an enquiry under these circumstances....."

6. The scope of judicial review in a case of this kind is restricted to considering whether clause (b) under the

second proviso to Article 311 (2) of the Constitution was properly applied or not. Article 311 (3) of the Constitution provides that if any question arises whether it is reasonably practicable to give to a person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss him, shall be final. The finality given to his decision is not, however, binding upon the Court. The Court will examine the charge of mala fides, if any, made in the writ petition. In considering the relevancy of the reasons, the Court will consider the situation, which, according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold the enquiry. If the Court finds that the reasons are irrelevant, then it will be an instance of abuse of power and would take the case out of the purview of clause (b) and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons, the Court will not, however, sit in judgement over them like the Court of first appeal. In order to decide whether the reasons are germane to caluse (b), the Court must put itself in the place of the disciplinary authority and consider what in the prevailing situation a reasonable man acting in a reasonable way, would have done. In other words, it is not a total or an absolute impracticability which is required by clause (b) of the

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second proviso. What is required is that the holding of the enquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing circumstances. Interpreting the provisions of Article 311 (2) (b) of the Constitution, the Supreme Court has observed in Union of India Vs. Tulsi Ram Patel, 1985 (3) S.C.C. 398 that where a civil servant, particularly through or together with his associates, so terrorises, threatens or intimidates witnesses who are going to give evidence against him, with fear of reprisal as to prevent them from doing so, or (b) where he by himself or together with, or through others, threatens, intimidates or terrorises the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held, or (c) where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant is or is not a party to bring about such a situation, it would not be reasonably practicable to hold the enquiry. In all these cases, numbers coerce and terrify while an individual may not."

7. The decision of the Supreme Court in Satyavir Singh Vs. Union of India, 1985 (4) S.C.C. 252, is also to the same effect.

8. In Jaswant Singh Vs. State of Punjab and Others, 1990 (2) SCALE 1152, the Supreme Court had to deal with

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a similar case. It was observed that the subjective satisfaction recorded in the impugned order should be fortified by independent material to justify the dispensing with the enquiry envisaged by Article 311(2) of the Constitution and that it cannot be rested solely on the ipse dixit of the concerned authority.

9. In Chief Security Officer Vs. S.B. Das, 1991 (1) SCALE 47, the Supreme Court observed that the personal humiliation and insults likely to be suffered by the witnesses or even their family members might become targets of acts of violence, are not good grounds for dispensing with the enquiry.

10. In the light of the aforesaid judicial pronouncements, the fact that the applicants are alleged to be desperate characters and that their continuance in Police is hazardous to the public, is hardly relevant for invoking the power under Article 311 (2) (b) of the Constitution. In our considered opinion, there is no impediment to holding regular departmental inquiry against the applicants after the criminal case has been decided. We, therefore, quash the impugned order of dismissal dated 22.10.1991 and direct that the applicants shall be reinstated as Constables with full back wages as expeditiously as possible and preferably, within a period of three months from the date of communication of this order.

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11. We make it clear that the respondents will be at liberty to hold departmental inquiry against the applicants under the relevant rules and in accordance with law. There will be no order as to costs.

Let a copy of this order be placed in both the case files.

(A.B. Gorhal)
Administrative Member

(P.K. Kartha)
Vice-Chairman(Judl.)